

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6176 OF 2008

(Arising out of SLP [C] No.14975 of 2005)

Bharat Sanchar Nigam Ltd.

... Appellant

Vs.

Sri Narayana Thimmappa Madivel

... Respondent

O R D E R

Leave granted. Heard learned counsel.

2. The first respondent was hired on daily wage basis, for miscellaneous work on 1.8.1998 by the Sub-Divisional Officer, Telegraphs, Kumta (Karwar District). No order of appointment was issued and he was paid from the contingency account. The respondent's services were discontinued with effect from 1.4.2000. Feeling aggrieved the respondent approached the Central Administrative Tribunal contending that he ought to have been given temporary status. The Tribunal directed the department to consider first Respondent's request. Accordingly, the appellant, successor of telecom department considered the case of first

respondent and passed an order dated 16.8.2001 rejecting the request for temporary status. The order stated that he was hired under the contingency expenditure account; that only casual mazdoors were entitled to conferment of temporary status; that recruitment of casual mazdoors was stopped with effect from 30.3.1985; that as first respondent was not employed as casual mazdoor, he was not entitled to conferment of temporary status. The first respondent challenged the said order in OA No.1262/2001 before the Central Administrative Tribunal, Bangalore and prayed for a direction to the appellant to grant him temporary status. The Tribunal, by order dated 6.2.2002 allowed the said application, quashed the order dated 16.8.2001 and directed the appellant to grant him temporary status from the due date in terms of the scheme dated 7.11.1989. That order was affirmed by the High Court by order dated 13.1.2005. The said order is challenged in this appeal by special leave.

3. The scheme dated 7.11.1989 referred to by the Tribunal is the Casual Labourers (Grant of Temporary Status and Regulation) Scheme, 1989 of the Telecom department. That was a Scheme for conferring contemplated "temporary status on casual labourers who are currently employed and have

rendered continuous service of at least one year". Interpreting a similar Scheme this Court had held that such a Scheme could not be considered as a continuous on going Scheme intended to give temporary status to all casual workers as and when they completed continuous service for the period prescribed in the said scheme; that such schemes were one-time Schemes under which persons who were in employment on the date of commencement of the Scheme and who had rendered the prescribed continuous service were entitled to temporary status and the scheme did not postulate grant of temporary status to casual workers who were subsequently employed, as and when they completed continuous service for the prescribed period. (See : *Union of India vs. Mohan Lal* - 2002 (4) SCC 573). The said principle applies to the 1989 scheme of the telecom department also. Therefore the Tribunal could not have relied on the 1989 scheme to direct conferment of temporary status to respondent who was engaged on 1.8.1998.

4. The Respondent had also relied on a departmental circular dated 29.9.2000 in his application before the Tribunal. In fact the respondent admitted that the said circular contemplated giving temporary status to those who were engaged earlier to 1.8.1998. The said circular, in no

way helps the respondent. The Circular of Telecom Department dated 29.9.2000 stated that the department's letter dated 12.2.1999 granted temporary status to casual labourers eligible as on 1.8.1998, and all casual labourers not eligible for temporary status on 1.8.1998 were to be disengaged forthwith. The Circular dated 29.9.2000 does not say that those engaged on 1.8.1998 shall be given temporary status. A person engaged on 1.8.1998 cannot be considered as having become eligible for temporary status on 1.8.1998 itself. It is apparent that to become eligible for grant of temporary status, the candidate must have been in service as on 1.8.1998 and should have worked as casual labourer continuously for the period prescribed in the letter dated 12.2.1999, as on 1.8.1998. The respondent admittedly was not engaged as casual labourers prior to 1.8.1998. As the respondent was engaged only on 1.8.1998 and was not in service for a continuous period of one year prior to that date, he was not entitled to grant of temporary status even under the letter dated 12.2.1999 read with circular dated 29.9.2000. This aspect has been completely lost sight of by the Tribunal and the High Court.

5. The appellant also contended that the appointment of respondent was not as a casual labourer. In view of what is

stated above, it is not necessary to examine as to whether the first respondent was a casual labourer or not.

6. We accordingly allow the appeal and set aside the orders of the Tribunal and the High Court and dismiss the application filed by the respondent claiming temporary status.

.....J
[R. V. Raveendran]

.....J
[J M Panchal]

New Delhi;
October 17, 2008.